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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,
Petitioner,

v.

EVALD JOHANN LARSEN,
Plaintiff-Respondent,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF SKIBSFARTEN'S ARBEIDSGIVERFORENING AS AMICUS CURIAE

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Skibsfartens Arbeidsgiverforening having obtained and filed written consent of counsel for the petitioner and of counsel for the respondent, respectfully submits this brief as amicus curiae.

Jurisdiction

The final judgment of the United States Court of Appeals for the Second Circuit was entered on May 2, 1952 (R. 129-130). A petition for a writ of certiorari was filed July 25, 1952, and was granted October 13, 1952 (R. 132). The jurisdiction of this court to grant a writ of certiorari is conferred by Title 28 United States Code, Section 1254.

Statement of Facts

The respondent, Evald Johann Larsen, a citizen and resident of Denmark, commenced this action in the United States District Court for the Southern District of New York on May 6, 1947 (R. 3) to recover for personal injuries incurred on board the ~~respondent's~~ petitioner's vessel, the S. S. RANDA on October 7, 1946 in Havana, Cuba (R. 26, 27, 33-34). A jury returned a verdict in favor of respondent finding that his injury was caused by the negligence of petitioner (R. 115-116). Judgment was entered on this verdict by the District Court (R. 120) and was affirmed by the United States Court of Appeals for the Second Circuit, per curiam, on the authority of *Kyriakos* v. *Goulandris*, 151 F. 2d. 132 (CCA 2, 1945); *Taylor* v. *Atlantic Maritime Co.*, 179 F. 2d 597 (CCA 2, 1950), cert. den., 341 U. S. 915 (1951), (R. 127-128).

The S. S. RANDA is registered under the Danish flag and the petitioner, its owner, is a Danish citizen (R. 16, 45). At the time of the injury respondent was employed by petitioner as a seaman on the S. S. RANDA under Articles calling for a voyage to "South America and other places" (R. 16, 44-46). These Articles were signed in New York City and provided in part that petitioner's employment was "on the basis of the regulations contained in the (Danish) Seaman's Law" (R. 45). Following his injury the respondent was hospitalized in Havana and then in New York at petitioner's expense (R. 16, 49). Following discharge from the hospital respondent received, also at petitioner's expense, out-patient treatment in New York until January 9, 1947 at which time he was declared fit for duty (R. 40, 41). In addition to the foregoing, respondent also received wages due to the date of the accident, seven days additional wages due under Danish Law, and maintenance and subsistence from December 10, 1946 until December 30, 1946 while an out-patient in New York (R. 16, 39, 40, 90-92). The respondent was also offered free transportation to Denmark for further treatment but this was refused (R. 50).

Interest of Skibsfartens Arbeidsgiverforening

Skibsfartens Arbeidsgiverforening is an association of Norwegian shipping companies engaged in ocean commerce throughout the world. Its home office is in Oslo, Norway. Its several hundred members include practically all the Norwegian companies who own ships trading in foreign commerce.

The association is interested in this case because its members annually employ a very large number of Norwegian seamen on board Norwegian flag vessels which engage in trade to and from the United States. In the course of this trade a substantial number of Norwegian seamen sign Articles in the United States for employment on the vessels of its members.

There is a complete system of law governing the relations between Norwegian shipping companies and the Norwegian seamen they employ on their vessels. The business policies of these companies are formulated on the assumption that the internal relations of the companies and their employees will be determined on the basis of the scheme of rights and duties established under prevailing Norwegian law. If the decision of the court below is affirmed the effect will be to interfere with the internal relations of Norwegian shipping companies and their employees who sign Articles in the United States for service on Norwegian flag vessels.

Argument

It has long been a settled principle of the general maritime law that where an action sounds in tort and the tort occurs on board a ship, the law of the flag of the vessel governs. If the action sounds in contract and concerns a matter relating solely to the internal economy and discipline of the vessel, the law of the flag of the vessel also governs. *Taylor* v. *Atlantic Maritime Co.*, 179 F. 2d 597 (CCA 2, 1950); *O'Neill* v. *Cunard White Star Limited*, 160 F. 2d 446 (CCA 2, 1947); *Kyriakos* v. *Goulandris*, 151 F.

2d 132 (CCA 2, 1945). It is well settled that a suit of this type concerns the internal economy and discipline of the vessel, *Kyriakos* v. *Goulandris, supra,* p. 139, 140; *Thompson Towing and Wrecking Assn.* v. *McGregor,* 207 F. 209 (CCA 6, 1913). Thus in the instant case under established rules governing choice of law Danish law would apply regardless of whether the suit be regarded as sounding in contract or in tort.

The question, of course, is whether the Jones Act[1] should be construed to nullify this long established principle of the general maritime law. Certainly the Act should not be so construed unless required by either its plain meaning or by over-riding considerations of policy. The Act does not in terms apply to the instant case, and it is questionable, to say the least, whether the entire scheme of the Act requires that it be applied here. (See Point I of petitioner's brief.) The question then is whether over-riding considerations of policy demand application of the Act. Only two policy considerations have been advanced in support of its application to the situation here presented.

(1) In the *Kyriakos* and *Taylor* cases it was stated that application of the Jones Act to all seamen who sign articles in the United States was necessary to enable American seamen to compete on equal terms with foreign seamen for jobs on foreign vessels. Unless, it was said, foreign seamen could avail themselves of the benefits of the Jones Act American seamen would never be employed on foreign vessels. *Kyriakos* v. *Goulandris, supra,* p. 137; *Taylor* v. *Atlantic Maritime Co., supra,* p. 600. As a practical matter there is no need for the Court of Appeals for the Second Circuit to be concerned with the preservation of the competitive position of American seamen with respect to employment on foreign vessels. There are very few American seamen who would be willing to serve at the lower pay

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[1] Section 33 of the Merchant Marine Act of June 5, 1920, c. 250, 41 Stat. 1007; Title 46, United States Code, § 688.

scales, as measured in dollars, available on foreign vessels. (See *O'Neill* v. *Cunard White Star, Ltd., supra,* p. 448.) American seamen, of course, would not have the benefit of the lower Norwegian living costs and would not be attracted by the Kroner benefits available to Norwegian seamen in Norway. Consequently preservation of the American seamen's competitive position concerning employment on foreign flag vessel is not a consideration of policy of sufficient weight to warrant application of the Jones Act solely because Articles were signed in the United States.

(2) The only other policy consideration advanced to justify extending the Jones Act in this situation is that it is necessary to enable the American Merchant Marine to successfully compete against foreign shipping. (See Point I of Brief of Amici Curiae on behalf of Petter D. Pedersen et al.) First, petitioner's brief points out that this consideration is in conflict with the policy of the United States not to afford secret subsidies (see Point I, pp. 24, 25 of petitioner's brief), and, second, it relates to a matter within the province of the legislature, not the judiciary.

Not only are there no policy reasons in favor of extending the application of the Jones Act in this case but there are strong reasons of policy against extending it. Many maritime nations of the world have provided extensive remedies to seamen injured in the course of their employment. Norway has long been one of the leaders in enacting social legislation of this sort. Norwegian seamen employed on Norwegian vessels are afforded a complete scheme of remedies. Under Norwegian law a Norwegian seaman is entitled to the following remedies:

1) Hospitalization, medical care without cost to the seaman, board and lodging during the period of convalescence until declared fit for duty.

2) Support for his family or dependents during the same period when signed off a Norwegian ship because of disability.

3) Repatriation and wages during the period of disability limited, to two months' wages for officers and one month's wages for others.

4) Compensation from the national insurance funds corresponding to the percentage of disability if the disability is caused by an injury and is lasting. The purpose of this insurance is to compensate the seaman for his financial losses and is similar to Workmen's Compensation Acts enacted in various states of the United States. The measure of compensation is, of course, determined by the cost of living in Norway. Although the Norwegian people enjoy one of the highest standards of living in the world, the cost of living is low when measured in United States currency.

5) In case of death the widow and minor children or other dependents will receive a pension.

Furthermore, under Norwegian law a seaman cannot sign away the above listed rights. Norwegian law also provides in substance that if it is necessary to leave a sick or injured seaman behind abroad, it is the duty of the ship's Master to hand him over to the care of the nearest Norwegian Counsel and to guarantee all expenses for the proper treatment of the seaman. It is also the duty of the Master to submit to the Consul all information pertaining to the case. The Consul takes care of the seaman in accordance with regulations, satisfies himself that he receives the necessary medical treatment and is granted all the rights to which he and his family are entitled.

The expenses of the national insurance plan for seaman outlined above is partly paid direct by the owner of the ship the seaman signed off, partly by national insurance funds. Contributions to the national insurance funds are required of all Norwegian ship-owners, depending upon the number of seamen employed and the tonnage of the ship.

Seamen who sign on Norwegian ships all over the world agree in their standard articles to serve under and to be bound by agreements obtained by nationally sanctioned collective bargaining and the provisions of Norwegian law. The articles cover the entire agreement between the seamen and the ship-owner. (Law respecting Seamen of February 16, 1923 No. 1 as amended; Law Concerning Insurance Against Disease of June 6th, 1930 No. 18 as amended; Law Relating to the Insurance of Seamen Against Accidents of June 24th, No. 11 as amended; Law Relating to Seamen's Pension of December 3, 1948, No. 7.)

If the decision of the Court of Appeals in this case is affirmed Norwegian seamen who sign on Norwegian ships in the United States will have access to a scheme of remedies wholly distinct from the foregoing which still govern rights of all other Norwegian seamen. Clearly, the intention to interfere with the internal affairs of foreign nationals should not be attributed to Congress without a clearer expression than is found in the Jones Act.

There remains one further matter. Counsel for respondent has implied that many foreign shipping companies are, in reality as much a part of the American shipping trade as if they were, in fact, American companies. (See Respondent's brief in reply to petition for writ of certiorari, pp. 4 through 7). First, that brief purports to make a number of statements of fact with respect to the conduct of foreign shipowners in connection with the calling of their vessels at American ports. There is no evidence in the record in this case one way or the other on any such points. Second, the implications which counsel for respondent apparently sought to create are misleading, at least with respect to Norwegian shipping companies, because under Norwegian law only Norwegian citizens or Norwegian companies having their head offices in Norway and controlled by Norwegian citizens can own and operate Norwegian ships. (Maritime Law of July 20, 1893, most recent am'd. December 3, 1948.)

Conclusion

It is respectfully submitted that the judgment of the Court of Appeals should be reversed because, in the opinion of the undersigned, there is no justification for construing the Jones Act so as to interfere with the internal affairs of foreign nationals where the only contact with the United States is the place of signing Articles.

Respectfully submitted,

SKIBSFARTENS ARBEIDSGIVERFORENING

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